that estate duty has been paid, as distinct from it being used as evidence of title. Furthermore, in addition to the schedule, the Commissioner of Estate Duty had in fact issued a separate certificate of payment of estate duty under s 42(1) of the Act. The original certificate is filed in the Registry of the Supreme Court in Probate No 1440 of 1976.

Thus, when the defendants' solicitors produced the certified grant to the plaintiffs' solicitors for inspection, they were not purporting to produce it as evidence of title but as evidence of the death of the deceased joint tenant and payment of estate duty on his share in the said property which has passed to the surviving joint tenant by operation of law.

The fourth ground of objection is also without substance. The records of the Registry of Births and Deaths and the Registry of the Supreme Court are, in law, as permanent as the Register of Deeds in the Registry of Deeds.

In my view, the defendants have adduced sufficient evidence required by law to prove the chain of title in the said property.

There will accordingly be a declaration that a good title to the said property has been shown and an order that the plaintiffs will pay to the defendants liquidated damages in accordance with the Singapore Law Society Conditions of Sale 1981 for the period from 20 October 1988 to the date of actual completion and also the costs of this application.

Application dismissed.

Solicitors: *Tan Rajah & Cheah* ; *Piah Tan & Partners.*

Reported by *Ng Sheau Jiuan*

Tan Kay Poh v Tan Surida & Anor

HIGH COURT (SINGAPORE) – DIVORCE NO 2256/87
CHAO HICK TIN JC
3 DECEMBER 1988

Family Law – Divorce – Respondent wife committed adultery with co-respondent – Whether petitioner husband entitled to claim damages from co-respondent on account of adultery – English courts no longer grant such damages – Only prevailing rules applicable in England imported into Singapore – Women's Charter (Cap 353, 1985 Ed), s 85 – Matrimonial Proceedings Rules 1981, r 46(3)

Family Law – Divorce – Costs against co-respondent – Claim for – Fact stated in respondent's affidavit that marriage was dead long before adultery – No affidavit in reply filed by petitioner to dispute this fact – Whether co-respondent should be ordered to pay costs

The petitioner, who had earlier petitioned the court for a divorce on the ground that the marriage had irretrievably broken down in that the respondent had committed adultery with the co-respondent, had been granted a decree nisi by the court. The court then ordered that all ancillary matters be adjourned to be heard in chambers.

In the present hearing, there were two main issues to be decided by the court: (a) whether the petitioner is entitled to claim for damages from the co-respondent on account of the adultery committed by the respondent with the co-respondent, and (b) whether the claim for costs against the co-respondent should succeed. With regard to the first issue, the petitioner contended that the court still had the power to award damages under s 85 of the Women's Charter and that r 46(3) of the Matrimonial Proceedings Rules 1981 impliedly preserved the right of petitioner to sue for damages against a co-respondent.

Held, not granting any orders:

(1) Section 85 imports, subject to the express provisions of the Women's Charter, principles on which the English court acts and gives relief. It only imports the prevailing principles or rules applicable in England. By virtue of s 4 of the English Law Reform (Miscellaneous Provisions) Act 1970, English courts now no longer grant damages on a petition for divorce on account of adultery.

(2) Rule 46(3) of the Matrimonial Proceedings Rules 1981 is not a substantive provision. It is a provision to facilitate enforcement of orders made by the court. Whether a petitioning husband may still sue for damages depends on the provisions in the Women's Charter itself. The Rules cannot give such right where none exists under the Charter.

(3) The respondent had stated in her affidavit that the marriage was dead long before the adultery and no affidavit in reply had been filed by the petitioner to dispute what was said by the respondent. Neither had the petitioner made any request for time to file an affidavit in reply. In the circumstances and on the facts, the respondent should not be condemned in costs.

Cases referred to

1 *Scott* v *Scott & Anor* [1957] 1 All ER 63 (refd)
2 *Pritchard* v *Pritchard & Sims* [1966] 3 All ER 601 (refd)
3 *Butterworth* v *Butterworth & Anor* [1920] P 126 (refd)

Legislation referred to

Matrimonial Proceedings Rules 1981 r 46(3)
Women's Charter (Cap 47, 1970 Ed) s 104
Women's Charter (Cap 353, 1985 Ed) ss 85, 88(3)
Law Reform (Miscellaneous Provisions) Act 1970 [UK] s 4

M Loganathan for the petitioner.
Anita Henry (Ms) for the respondent.

Cur Adv Vult

Chao Hick Tin JC: On 7 July 1988 I granted a decree nisi on an uncontested basis to dissolve the marriage solemnized on 1 August 1975 between the petitioner (husband) and the respondent (wife) on the ground that the marriage had irretrievably broken down in that the respondent had committed adultery with one Neo Kay Cheong, the co-respondent, and the petitioner had found it intolerable to live with the respondent. I also ordered that all the ancillary matters, including a prayer that the co-respondent be condemned in damages, be adjourned to be heard in chambers.

The first issue that is now raised before me is whether, under the provisions of the Women's Charter as they now stand, the petitioner is entitled to claim for damages from the co-respondent on account of the adultery committed by the respondent with the co-respondent.

The position in England before 1971 was quite clear. A husband could claim for damages against a co-respondent: see *Scott* v *Scott & Anor*[1] and *Pritchard* v *Pritchard & Sims*.[2] This remedy was not available to the wife as it was based upon the premise that the husband had a quasi-proprietary interest in his wife and her services. The principles governing damages were dealt with in *Butterworth* v *Butterworth & Anor*[3] where it was held that damages should merely be compensatory and not exemplary or punitive.

The position in England has, however, been altered since 1971. Section 4 of the English Law Reform (Miscellaneous Provisions) Act 1970 provides that 'after this Act comes into force no person shall be entitled to petition any court for, or include in a petition a claim for, damages from any other person on the ground of adultery with the wife of the first mentioned person'. By virtue of this section, no claim for damages against a co-respondent may now be made in England by a husband in a petition for divorce.

Marriage law in Singapore also underwent drastic changes in 1980. Prior to 1980, divorce was granted only if one spouse proved that the other spouse had committed a matrimonial offence, eg adultery, cruelty or desertion. There was then an express provision in the Women's Charter (s 104), which expressly permitted a husband in a petition for divorce or for judicial separation to claim damages from any person on the ground of his having committed adultery with the wife of such a petitioner. That provision also empowered the court to ascertain the damages payable. However, in 1980, by an amendment to the Women's Charter, which came into force on 7 August 1980, divorce is no longer based on fault but on the concept of 'irretrievable breakdown'. This may be established only by proof of one or more of five facts set out in s 88(3) of the Women's Charter (Cap 353, 1985 Ed). By the same amendment Act, the previous s 104 was also repealed. It follows that the right of a petitioning husband to sue a co-respondent for damages has been abolished.

Counsel for the petitioner argued that, notwithstanding the repeal of the previous s 104, the court still has the power to award damages because of s 85 of the Women's Charter (Cap 353, 1985 Ed) which reads as follows:

> Subject to the provisions of this Part, the court shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the court are, as nearly as possible, conformable to the principles on which the High Court of Justice in England *acts and gives* relief in matrimonial proceedings.

In my opinion this argument must fail. Section 85 imports, subject to the express provisions of the Women's Charter, principles on which the English court acts and gives relief. Note the present tense of the words 'acts' and 'gives' in that section. It only imports the prevailing principles or rules applicable in England. English courts now no longer grant damages on a petition for divorce on account of adultery.

A further argument relied upon by counsel for the petitioner is based on r 46(3) of the Matrimonial Proceedings Rules 1981. Rule 46(3) provides that 'where a party who has been ordered to lodge damages in court fails to do so in accordance with the order, the party in whose favour the order was made may apply to the judge at any time to vary the order ...'. Counsel argued that this rule impliedly preserves the right of a petitioner to sue for damages against a co-respondent. I do not accept that argument. Rule 46(3) is not a substantive provision. It is a provision to facilitate enforcement of orders made by the court. Whether a petitioning husband may still sue for damages depends on the provisions in the Women's Charter itself. The Rules cannot give such a right where none exists under the Charter. I am conscious that this identical provision was also found in the repealed Divorce Procedure Rules 1950. But it does not fall on me in the present proceedings to determine in what circumstances, if at all, the court will order the lodgment of damages in court under r 46(3).

I turn next to the claim for costs against the co-respondent. The law on the question of costs in circumstances such as the present case is set out in 13 *Halsbury's Laws of England*, 4th Ed, Vol 13, para 970 as follows:

> A co-respondent, against whom adultery is established, may be ordered to pay the whole or any part of the costs of the proceedings; but in exercising its discretion as to the costs which a co-respondent may be ordered to pay, the court may have to consider whether in fact the co-respondent was responsible either for the breakdown of the marriage or for the litigation.

A similar statement of the law is contained in p 1392 of *Rayden on Divorce*, 14th Ed, Vol I.

The petitioner had proved to my satisfaction that the respondent and the co-respondent committed adultery on 9 October 1987: thus the decree nisi granted on 7 July 1988. However, in an affidavit filed on 10 November 1988 by the respondent in relation to the ancillary matters, the respondent stated that there was unhappiness between the petitioner and the respondent even before the respondent was introduced to the co-respondent as the petitioner wanted to 'cage-up' the respondent. The parties often quarrelled and the respondent had in fact left the matrimonial home on three occasions between 1985 and 1987. The respondent also stated that her relationship with the petitioner was strained even more when she started to work in April 1987. The co-respondent was then a good friend of the family. The respondent said the co-respondent 'had nothing to do with the strained relationship between the petitioner and (the respondent) and (the co-respondent) in fact sought to reconcile the petitioner and (the respondent) whenever (the respondent) left the matrimonial home'. The last straw was an incident which occurred on 16 September 1987 when the petitioner and the respondent quarrelled over the respondent working overtime and he accused her of having extra-marital affairs and chased the respondent with a chopper. Fearing for her life, the respondent left the matrimonial home and resolved never to return. The respondent said that the 'marriage was dead long before the adultery' and thus she allowed the petition to proceed on an uncontested basis. No affidavit in reply has been filed by the petitioner to dispute what is said by the respondent. Neither has the petitioner made any request to me for time to file an affidavit in reply. In the circumstances and on the facts now before me, I do not think I ought to condemn the co-respondent in costs.

In the result I am not granting any order in respect of both the ancillary prayers of the petitioner.

Solicitors: *Loganathan & Co*; *Ganesan Carlose & Partners*.

Reported by *Ng Sheau Jiuan*

Peter Ralph Grossey v The Chartered Bank

HIGH COURT (SINGAPORE) – SUIT NO 3141 OF 1984
RAJAH J
18 NOVEMBER 1988

Banking – Current account – Overdraft against marketable securities – Bearer securities – Notice of redemption – Whether part of banking business – Wang bonds – Difference in converted value and face value – Claim by plaintiff

The plaintiff was at all material times a customer of the defendant bank ('the bank') with which it maintained a current account on which it had advanced to him various sums of money from time to time by way of overdraft against marketable securities lodged with it by the plaintiff. The plaintiff said that he discussed with Northrop, an officer of the bank, in April 1982 the possibility of offering convertible bearer bonds as security for credit facilities by the bank. At that time as indeed of now, in respect of Eurobonds, which are internationally traded securities, the major part of Eurobond clearing and settlement was and is conducted through two centralized clearing systems, namely, Euro-clear in Brussels and CEDEL in Luxembourg. Each of the two systems provided an efficient, risk-free settlement system for internationally traded securities, avoiding the costs and delays caused by physical delivery of certificates. Participants in both systems had to be institutions. The plaintiff's evidence is that as a result of the discussions, agreement between the bank and himself was reached, culminating in a letter dated 12 April 1982 from the bank to himself (AB4) which, inter alia, reads:

> '(1) Further to our recent discussions we are pleased to advise that our London merchant bank, Standard Chartered Merchant Bank Ltd ... are members of the Euro-clear System and can act as custodian for the various loan stocks to be held as security for your facilities in Singapore...
>
> (3) Please arrange for the securities to be delivered free of payment to Standard Chartered Merchant Bank Ltd, London ... It will be necessary for us to furnish our associates with your full name and residence status and your interest payment instructions. You should also let us know by whom the various securities will be delivered. Please advise accordingly.'

The plaintiff's evidence is that on the Saturday following AB4 of 12 April 1982 or the Saturday after that Northrop asked him to cancel the arrangements as had been set out in para 3 of AB4, that is to say, to deliver the bond securities to the Standard Chartered Merchant Bank in London, and told him to have the said bearer bonds physically transferred to the bank in Singapore. As a result of this the plaintiff countermanded the order to his agent in England to have the bearer bonds placed with the Standard Chartered Merchant Bank in London and instead asked his agent to have the convertible bearer bonds sent on to the bank in Singapore. In the event some of the bonds came to him, which he handed over to the bank as and when they arrived, while others went direct to the bank. The plaintiff's view of the bank's change of mind is that it seemed to him that the bank would and should know what it was doing and that perhaps Northrop had found out more from London of how the bank could deal from Singapore with the situation. On this issue the bank's evidence as deposed to by Northrop (DW1) and supported by Chee Kok Kee (DW2), the officer in charge of the securities department of the bank, was to the effect that at no time did Northrop countermand para 3 of AB4 and that it was the plaintiff who of his own volition had decided that the